UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

v. 09 CR 948 (NRB)
09 CR 1188 (LTS)

BRANDON LISI

Defendant
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New York, N.Y.
April 19, 2013
1:30 p.m.

Before:

HON. NAOMI REICE BUCHWALD
District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
MICHAEL D. LOCKARD
Assistant United States Attorney

MORITT HOCK HAMROFF LLP
Attorney for Defendant Lisi
RANDY S. ZELIN

-also present-
OLGA NOVOSAD

(In open court; case called)

THE DEPUTY CLERK: This is 09 CR 948, as well as 09 CR 1188, United States v. Brandon Lisi.

Is the government present and ready to proceed?

MR. LOCKARD: Yes. Good afternoon, your Honor. Michael Lockard for the government. With me at counsel table is Special Agent Olga Novosad of the FBI.

THE DEPUTY CLERK: Is defense present and ready to proceed?

MR. ZELIN: Yes. Good afternoon, your Honor. My name is Randy Zelin from Moritt Hock & Hamroff. I represent the defendant, Brandon Lisi, who is to my left and your Honor's right.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: Judging from the document before me, Mr. Lisi is prepared to enter a plea of guilty to Count One of the indictment before me and Count One of the indictment assigned to Judge Swain, is that correct?

MR. ZELIN: Yes, your Honor.

THE COURT: Mr. Lisi, I would ask you to stand for a minute, please.

THE DEFENDANT: Yes, your Honor.

THE COURT: Would you raise your right hand?

THE DEFENDANT: Yes, your Honor.

(Defendant sworn)

THE COURT: Tell me your full name, please.

THE DEFENDANT: Brandon Kiell Lisi.

THE COURT: What is your middle name?

THE DEFENDANT: Kiell.

THE COURT: How old are you, sir?

THE DEFENDANT: 39, your Honor.

THE COURT: Why don't you sit down?

MR. ZELIN: Thank you, your Honor.

THE COURT: Mr. Lisi, what was the last grade in school that you completed?

THE DEFENDANT: Juris doctorate, your Honor, law school.

THE COURT: Are you now -- I should know the answer to this -- or have you recently been under the care of a doctor or mental health professional?

THE DEFENDANT: Under the care of several doctors, your Honor.

THE COURT: Are you taking any medication as a result of that medical care?

THE DEFENDANT: Yes, your Honor.

THE COURT: Could you tell me what drugs you have been prescribed?

THE DEFENDANT: There's a lot, your Honor. Azor is the most recent for blood pressure. Ventolin. Simbicort. Hydromorphone. Percocet. Rubifluxin (ph). Singulair. I believe that's it, your Honor. Prednisone, your Honor. I apologize for interrupting. Prednisone.

THE COURT: Have you taken any of those drugs within the last 24 hours?

THE DEFENDANT: Yes, your Honor, but 18 hours ago so that I would be lucid for this.

THE COURT: So at this point, are any of those drugs affecting your ability to understand and participate in this plea here today?

THE DEFENDANT: No, your Honor.

THE COURT: Have you ever been hospitalized or treated for alcoholism or narcotics addiction?

THE DEFENDANT: No, your Honor.

THE COURT: Have you had sufficient time to discuss your plea with your counsel, Mr. Zelin?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you been satisfied with the advice and counsel that he's given to you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you ready to enter a plea today to the first counts of the two indictments?

THE DEFENDANT: Yes, your Honor.

THE COURT: What is your plea? Guilty or not guilty.

THE DEFENDANT: Guilty, your Honor.

THE COURT: Mr. Lisi, in order to determine whether your plea is voluntary and made with a full understanding of the charges against you and the consequences of your plea, I'm going to make certain statements to you, and I'm going to ask you certain questions. I want you to understand that I need not accept your plea unless I am satisfied that you are in fact guilty and that you fully understand your rights.

So, the charge against you in both Counts One of the two indictments is the same except that Count One of the indictment before me covers the period 2005 to 2007, and the period in the second indictment assigned to Judge Swain covers the period 2006 to March 2009.

In both indictments, Count One charge you with participating in a conspiracy to commit bank fraud and wire fraud in connection with fraudulent applications for residential mortgage loans. Both of these crimes carry a maximum possible sentence of 30 years in prison, a maximum fine of $1 million or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to a person other than yourself as a result of the offense, and a $100 special assessment and supervised release of five years. In addition, the Court is required to order restitution.

Do you understand that those are the charges in the two counts to which you're pleading and the maximum penalties applicable to those charges?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that it is part of your plea to waive any objection you might have to these charges based on venue?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that it is part of your plea to admit the forfeiture allegations in the two indictments and to agree to forfeit the sum of $7 million to the United States?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that in exchange for your plea of guilty, that the U.S. Attorney's Office has agreed not to prosecute you further for the Counts One of the respective indictments and will move at sentencing to dismiss any open counts against you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that you have the right to plead not guilty and a right to a trial on the charges against you, and, in fact, the right to a jury trial?

THE DEFENDANT: Yes, your Honor.

THE COURT: In fact, a trial has been scheduled, at least in the case before me, for June, is that not correct?

THE DEFENDANT: That's correct, your Honor, that's my understanding.

THE COURT: Mr. Lockard, I would ask you please to recite the elements of the crimes charged.

MR. LOCKARD: Yes, your Honor. Count One of each indictment charges a conspiracy to commit bank fraud and wire fraud in violation of Title 18, United States Code, Section 1349. The elements of that offense are:

First, an agreement between two or more people to accomplish an object that is illegal under United States law.

Second, that the defendant willfully and knowingly joins into that agreement.

And, third, that one of the co-conspirators undertakes at least one overt act in furtherance of the unlawful object.

The elements of the first object, wire fraud, in violation of Title 18, United States Code, Section 1343 are:

First, that the defendant devised a scheme or artifice to defraud or to obtain money or property.

Second, the defendant did so by means of false and fraudulent pretenses.

Third, that the defendant made or caused to be made an interstate wire.

And, fourth, that the wire was for the purpose of executing the scheme or artifice to defraud.

The second object of the conspiracy on both counts is bank fraud in violation of Title 18, United States Code, Section 1344. The elements of that object are:

First, that the defendant devised a scheme or artifice to defraud a financial institution or to obtain money or property owned by or under the control of a financial institution.

Second, that the defendant did so by means of false and fraudulent pretenses.

And, third, that at the time the financial institution was a financial institution as defined by statute and that its deposits were insured by the Federal Deposit Insurance Corporation.

THE COURT: Mr. Lisi, do you understand that if you pled not guilty and went to trial, the burden would be on the government to prove each and every element of the crimes charged beyond a reasonable doubt in order to convict you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at a trial, you would have the right to be represented by an attorney at all stages of the proceedings, and, if necessary, an attorney would be appointed for you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at a trial, you would have the right to confront, and cross-examine witnesses against you and the right not to be compelled to incriminate yourself?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at a trial, you would be presumed innocent until such time, if ever, the government established your guilt by competent evidence to the satisfaction of the trier of fact beyond a reasonable doubt?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at a trial, you would have the right to testify and would also be entitled to compulsory process, in other words, the right to call other witnesses on your behalf?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if your plea is accepted, that there will be no further trial of any kind, so that by pleading guilty, you are waiving your right to a trial?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you are sentenced to a period of supervised release, and if you violate the terms of your supervised release, that an additional period of jail time may be imposed without credit for the time that you had previously spent on supervised release?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that in connection with your plea of guilty, that the Court may ask you certain questions about the offense to which you have pled, and if you answer those questions under oath and on the record and in the presence of your lawyer, that your answers, if false, may later be used against you in a prosecution for perjury or false statement?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Lisi, do I assume correctly that you are a citizen of the United States?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Lisi, did you sign a plea agreement earlier today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Before you signed the plea agreement, did you read it?

THE DEFENDANT: Yes, your Honor.

THE COURT: Before you signed it, did you discuss it with Mr. Zelin?

THE DEFENDANT: Yes, your Honor.

THE COURT: Separate and apart from the plea agreement, have any threats or promises been made to you to make you plead guilty?

MR. ZELIN: Your Honor, there is one additional agreement between the government and my client that I understand that the government will be putting on the record.

MR. LOCKARD: Judge, for the purposes of clarifying the record, your Honor, the plea agreement contains all of the agreements with respect to the defendant's plea to Count One of the indictment before your Honor and to Count One in the indictment before Judge Swain. During the course of plea discussions, there was the issue of whether the defendant would also plead guilty to conduct post arrest -- some of which is addressed in our December letter to the Court about the defendant's bail conditions -- and the defendant is not pleading guilty to anything relating to that conduct at this time. The government has made a commitment to Mr. Zelin that we will meet with him about that topic before any final charging decisions are made. But that conduct is not part of this plea agreement, and this plea agreement covers every agreement with the defendant and his counsel with respect to his plea to these two counts.

THE COURT: That having been said, have any other promises been made to you to make you plead guilty?

MR. ZELIN: Your Honor, there have been no other promises. The only other thing that I would put on the record, and, of course, it's subject to your Honor's final decision, it's my understanding that the government will not be making a motion for a change of my client's custody status if, as and when your Honor accepts my client's pleas.

MR. LOCKARD: We don't intend to make such a motion, your Honor.

THE COURT: Just to be clear, have any threats been made to you, Mr. Lisi, to induce you to plead guilty?

THE DEFENDANT: No, your Honor.

THE COURT: Have any understandings or promises been made to you concerning the sentence that you will receive?

THE DEFENDANT: No, your Honor.

THE COURT: Is your plea voluntary; in other words, of your own free will?

THE DEFENDANT: Yes, your Honor.

THE COURT: I am going to review a few portions of the plea agreement with you to make sure that you understand them. First, do you understand that the plea agreement contains a stipulated guidelines range of from 78 to 97 months with a fine range of $12,500 to $1 million?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that the parties have agreed that neither an upward nor a downward departure from the stipulated guidelines range is warranted, but that either party may seek a sentence outside of the stipulated guidelines range?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that the government is relieved or is free to seek an adjusted guidelines range if it learns additional facts about your criminal history, or if you engage in conduct which constitutes an obstruction of justice, or if you commit another crime after signing this agreement, or if you fail to clearly demonstrate acceptance of responsibility, among other things?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that this plea agreement binds neither the probation office nor the Court as far as the guideline stipulation is concerned, and that the sentence to be imposed upon you is determined solely by the Court?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you receive a sentence within or below your stipulated guidelines range, that you have waived any right to appeal your sentence?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you pleading guilty because you are, in fact, guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that this plea agreement doesn't bind any other prosecuting authority other than United States Attorney's office for the Southern District of New York?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that this plea agreement may not be changed except in a writing signed by all parties, and that it takes the place of any prior understanding or promise except for a written proffer agreement that might have been entered into?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Lisi, did you commit the offenses that were charged in Count One of the indictment before me and Count One of the indictment before Judge Swain?

THE DEFENDANT: Yes, your Honor.

THE COURT: Would you tell me in your own words what you did?

MR. ZELIN: Your Honor, with the Court's approval, my client will be reading an allocution. We'll start with Count One of the indictment before your Honor, and then we'll be going to Count One of the indictment before Judge Swain, if that's acceptable.

THE COURT: That's fine.

MR. ZELIN: Thank you. Would you like my client to stand or remain seated?

THE COURT: He can sit.

THE DEFENDANT: Your Honor, during the time period in or about 2005 to 2007, in the Southern District of New York and elsewhere, I participated in a scheme to defraud lenders in connection with residential mortgage loans. This scheme was furthered through the use of wires for telephone and faxes through the United States Postal Service, through the United States Banking system including through bank wire transfers and federally insured lenders.

On or about October 19, 2006, through the use of telephone lines, I had a telephone conversation with a co-defendant, Jeffrey LaRochelle, where we discussed providing a straw buyer to enter into a contract to purchase real estate property and apply for a mortgage using a straw buyer's good credit.

MR. ZELIN: May we have one moment please, your

Honor.?

(Pause)

MR. ZELIN: That would be with regard to Count One of the indictment before your Honor.

THE COURT: If we could just stop there.

Mr. Lockard, is there anything else that you would like me to ask Mr. Lisi?

MR. LOCKARD: I think that's sufficient with respect to Count One of 09 CR 948.

THE DEFENDANT: Your Honor, with respect to the indictment I'm charged with in front of Judge Swain, during the time period in or about 2006 through 2009, in the Southern District of New York and elsewhere, I did participate in a scheme with others to defraud lenders in connection with residential mortgage loans. This scheme was furthered through the use of wires for telephone and faxes through the United States Postal Service, through the United States Banking system including through bank wire transfers and federally insured lenders. Properties that were subject to this scheme include 135 Woodhill Lane, Manhasset, New York; 1028 Knabbe Court, Uniondale, New York; and 3516 Neptune Avenue in Brooklyn; and 708 Allwyn Street in Baldwin, New York.

During this time I participated in a scheme to defraud lenders who funded loans collateralized by these properties where straw buyers such as Eric, Craig and Laura Kesten, the children-in-law of Louis Kesten, purchased these properties, and submitted false and fraudulent documents to the lenders, as well as where Kesten or an entity controlled by him sold the property to Melissa Lanzilotta Smith, who was a straw buyer and also submitted false and fraudulent loan documents to the lender.

For example, with regard to many of the properties where the Lesten children were purchasers and where Lanzilotta-Smith purchased from Lesten, the lenders were deceived into believing that Kesten's children and Lanzilotta-Smith would be occupying the premises as their primary residence, when they were in fact not going to be living in the mortgaged premises.

In many cases, the purchase prices were inflated to induce the lender to lend a greater amount than the lender otherwise would have. In addition, the lender was deceived because the lender was not told that the loan proceeds were not going to be used to fund the purchase of the property or pay off an existing loan where the existing mortgage was to be refinanced, but instead the loan proceeds were going to replace shortfalls in co-defendant Dustin Dente's escrow account. And as a result of co-defendant Dente making payments to the benefits of Louis Kesten, including the mortgages and expenses in connection with the properties purchased by the Lesten family as straw buyers, or where Lesten or an entity controlled by him sold the property to Melissa Lanzilotta-Smith who was a straw buyer. As a result, documents such as the Form HUD-1 was fraudulent.

In other words, your Honor, the money was used was used to backfill Dustin Dente's escrow account.

I profited from this scheme, for example, by being paid compensation for work as an employee of Dustin Dente's, or by receiving commissions or having loan proceeds available for investment opportunities. I also became aware that Dente was paying for expenses in connection with the premises purchased bay the Lesten children in order to keep Louis Lesten from exposing his fraudulent scheme.

THE COURT: Mr. Lockard, is there anything else you wish to ask Mr. Lisi on Judge Swain's Count One?

MR. LOCKARD: Your Honor, I think that's sufficient.

THE COURT: Mr. Lisi, do you still wish to plead guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Zelin, do you know of any reason why Mr. Lisi ought not to plead guilty?

MR. ZELIN: No, I do not, your Honor.

THE COURT: Mr. Lisi, I'm satisfied that you understand the nature of the charge against you and the consequences of your plea, and that your plea is made voluntarily and knowingly, and that there is a factual basis for it. Accordingly, I will accept your plea of guilty and direct a presentence report to be prepared.

Did you reach some agreement on sentencing? Is it still separate sentencing?

MR. LOCKARD: Your Honor, as the plea agreement reflects, we will be writing a letter to both yourself and Judge Swain requesting a consolidated sentencing and for the Court to resolve as they see fit.

THE COURT: So then maybe until Judge Swain and I work that out, perhaps we ought not set a sentencing date? I assume you'll get that letter soon, and I don't think this is going to put it off very long because I have a feeling I know how it's going to work out.

MR. LOCKARD: The letter will be in soon, and I think we can still go ahead ordering the PSR.

THE COURT: Let's order the PSR and at least get that started. I think we can tell them that sentencing may be approximately four months from now.

(Pause)

THE COURT: Just to make sure that they start doing the presentence report, let me pick a date; and if it turns out to be me, then it's real, and, if not, we'll just change it.

How about August 21 at 3:30?

MR. ZELIN: Your Honor, would it be possible just to go to the first week beyond Labor Day?

THE COURT: Simply because it's a matter of changing law clerks, I prefer to keep the law clerk who's been working on this.

MR. ZELIN: Yes, your Honor. If we may have a date in late as August as possible. My oldest son is leaving for college, so I'm going to be kind of knee-deep in getting him situated, getting him set and getting him off.

THE COURT: So tell me when -- do you know what the date is? I'm not trying to interfere with that.

MR. ZELIN: It's going to be somewhere in the area of the August 20s. That is why I was hoping to go beyond Labor Day, but I understand the Court wanted to keep the clerk. So if we can go in late as August as possible.

THE COURT: Let's do this: Isaac is leaving on August 23. If it turns out you are really not available that week, I am generally not available the week after, so I am going to put down August 15 as our place holder. Then, as I say, if it turns out to be my sentence, and you learn some more information, you tell me what you learn, exactly when you will be otherwise engaged, and we will try to do our best to work around that.

MR. ZELIN: Thank you, your Honor.

THE COURT: OK.

MR. LOCKARD: Still at 3:30 on the 15th, your Honor?

THE COURT: Yes, 3:30 on the 15th. Assuming that's the real date, unless somehow we are can put it off consistent with Mr. Zelin's schedule.

MR. ZELIN: Thank you, your Honor.

(Adjourned)